

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4952 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BRAHMBHATT BHARATKUMAR

HARGOVINDAS

Versus

STATE OF GUJARAT

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Appearance:

Mr. D.C.Rawal for MR MR ANAND for Petitioner  
H.P.Hasurkar, Government Solicitor for  
the Respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/09/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the order dated 22.1.1982 passed by the District Superintendent of Police, Mahesana by which the petitioner has been discharged from service by an order dated 15.10.81 requiring the petitioner to deposit a sum of Rs.1672/- as security money and the

order dated 15.10.81, by the District Superintendent of Police, Mahesana and for a direction to the respondents to reinstate the petitioner with continuity of service and all other consequential benefits and for arrears of salary and other financial benefits with interest at the rate of 12% per annum.

2. 12 persons including the present petitioner were appointed after going through the examination as police constables from 6.2.81 in the pay scale of Rs.200-3-212-4-240-5-260 by an order dated 6.2.1981. Some threats took place in the night of 3/4.6.1981 and the matter was reported at the police station on 6.6.81. In that case, the petitioner was also involved as an accused out of nine accused persons. The respondent no. 2 District Superintendent of Police, Ahmedabad district passed some order dated 22nd January, 1982 discharging the petitioner from service which appears from the order dated 18.10.81 whereby the petitioner was required to deposit the amount of security bond. The petitioner alongwith others faced the trial for the offences under sections 457 and 380 read with section 114 of the Indian Penal Code. All the accused persons including the petitioner were found innocent and were acquitted by the Joint Judicial Magistrate, First Class, Patan vide judgment and order dated 31.1.90. After the judgment of acquittal passed by the Judicial Magistrate, First Class, Patan, the petitioner moved a representation before the respondent no. 2 District Superintendent of Police, Mahesana for reinstatement in service. The respondent no. 2 informed the petitioner by an order dated 19th May, 1990 that services of the petitioner have been terminated and the petitioner was appointed purely on temporary basis and hence he cannot be reinstated in service.

3. The learned counsel for the petitioner submitted that the petitioner was appointed after going through the whole process of a competitive test on the regular post by an order dated 6.2.1981. Merely because the petitioner was found involved in a criminal case, the order of termination/discharge has been passed by the respondent without holding a regular departmental inquiry and thus it is void, illegal and against principles of natural justice. He has also relied on the decision in the case of Babulal vs. State of Haryana and others reported in AIR 1991, SC, 1310 wherein an ad hoc employee was placed under suspension on the sole ground that criminal proceedings were pending against him and his services were terminated during pendency of the suspension and also during pendency of the criminal

proceedings which ultimately has culminated into acquittal and he was not considered for regularisation eventhough he had fulfilled all requisite terms, executive instructions provided for regularisation of such employees. The order of termination of services was thus illegal. In para-8 of the said judgment, a reference has been made to the observations made by the Supreme Court in the case of Smt. Rajinder Kaur vs. State of Punjab (1986) 4 SCC, 141 (AIR 1986, SC 1790) in which it is held as under:

"The impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rule 1934, was really made on the basis of them is conduct as found on enquiry into the allegation behind her back. Though couched in innocuous terms, the order was merely a camouflage for an order of dismissal from serving on the ground of misconduct. This order had been made without serving the appellant any charge-sheet, without taking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. The order was thus, made in total contravention of the provisions of Article 311(2) and was therefore, liable to be quashed and set aside."

4. Heard the learned counsel for the respondent State. The learned counsel submitted that the involvement of the petitioner in criminal offence was during training period and he was not a confirmed employee. Hence, the respondents were at liberty to discharge him from service before completion of the training period.

5. I have given anxious thought to the submissions made on behalf of the parties. In the present case, the petitioner was appointed on the regular post though he was under training and was to be confirmed after training. Meanwhile, a complaint came to be filed on 6.6.81 which does not name the petitioner as an accused. Subsequently, it was detected by the police that the petitioner was also one of the accused persons. Hence, implicated the petitioner without waiting for the outcome of the criminal prosecution and passed the order dated 22.1.82 discharging him from service only on the ground that he was involved in criminal proceedings. The case law cited by the learned counsel for the petitioner

squarely applies to the facts of the present case inasmuch as the petitioner's services. It appears that by the first order, the services of the petitioner were terminated during the pendency on the ground of pendency of the criminal proceedings as the petitioner was involved in a criminal case and without waiting for the result of the criminal proceedings, the petitioner was discharged/terminated. In the present case, no disciplinary inquiry has been held against the petitioner and no charge was levelled against him. In my opinion, he was under training and without giving a reasonable opportunity of hearing to him, his services have been terminated and as such the petitioner is entitled to be reinstated in service with full back wages and the impugned orders are liable to be set aside.

7. Now, regarding back wages, learned Government Solicitor has argued that the petitioner is not entitled for any back wages as he has not worked for the period from the date of discharge till this date and the impugned order and this Court has set aside the impugned orders on the ground of not holding a regular departmental inquiry and the petitioner was not given an opportunity of hearing by holding a regular inquiry. As held in the case of Babu Lal vs. State of Haryana, the petitioner was reinstated in service with full pay and allowances from the date of termination till the date of reinstatement with all pay and allowances from the date of termination till the date of reinstatement in service minus suspension allowances that had been received by the appellant of that case during the suspension period, if any.

8. In view of the above discussion, the petition is allowed. The impugned orders dated 22.1.1982 at Annexure "D" and dated 19.5.90 at Annexure "H" passed by the respondent no. 2 District Superintendent of Police, Mahesana are hereby quashed and set aside. The respondent no. 2 is directed to reinstate the petitioner with full pay and allowances and all other consequential benefits with continuity of service as held in the foresaid judgment of the Supreme Court. The respondents are also directed to reinstate the petitioner in service and pay him arrears of pay and allowances within three months from the date of producing a certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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